

**PRESENTATION OF DRAFT
ADMINISTRATIVE RULES 1-3
(March 27, 2002)**

RULE 1.01 - Definitions

“Beneficiary”. HRS §87A-1 defines an employee-beneficiary to include the beneficiary of any employee who is killed in the performance of duty and the beneficiary of a retired member of the employees’ retirement system. However, the term “beneficiary” is nowhere defined in HRS Chapter 87A. *[Given that employee-beneficiaries only include the surviving children of a deceased retired employee if they are under the age of 19, this definition will have to be modified to eliminate full-time students over the age of 19. With this modification, the definition here is unchanged from current PEHF rules.]*

“Benefits Plan”. The proposed rules make reference to Fund benefits plans and Non-Fund benefits plans. This definition is to show what the term “benefits plan” encompasses. It excludes long-term care benefits plans since they are treated differently by HRS Chapter 87A, e.g., such plans are required to be offered at no cost to the public employers. *[There is no similar definition in the current PEHF rules.]*

“Child”. HRS §87A-1 defines a dependent-beneficiary as including an “unmarried child deemed eligible by the board”. It also defines an employee-beneficiary as including the surviving child of a deceased retired employee. This definition is an attempt to define who qualifies as a child under these provisions. *[The current PEHF rules only define “foster child”. The proposed rule includes a definition of foster child that is broader in that it includes children over the age of 19 and children whom an employee beneficiary has been awarded legal and physical custody of by court order.]*

“Employing agency”. The rules require enrollment applications and certain notices to be filed with the employee-beneficiary’s “employing agency”. This defines who the employing agency is for persons such as retirees. *[This definition is practically the same as in the current PEHF rules.]*

“Full-time student”. The rules allow full-time students over the age of 19 to be dependent-beneficiaries under certain circumstances. This defines what is required for a student to be considered “full-time”. *[There is no similar definition in the current PEHF rules since the PEHF generally provides no coverage for children over the age of 19.]*

“Non-Fund benefits plan”. Under federal law, an employee-beneficiary may enroll in the Fund’s benefits plan if he or she lost coverage in another benefits plan (e.g., spouse’s benefit plan) under certain circumstances. This definition was

created to have a shorthand reference to such other benefits plans. *[There is no similar definition in the current PEHF rules.]*

“Trustee Group”. The Fund’s operating rules make reference to the trustee groups several times. This definition was created to define what are the two trustee groups. *[There is no similar definition in the current PEHF rules.]*

RULE 1.02 - Public Information

Most administrative agencies have a rule covering public inspection and requests for public records. These rules state how one requests public inspection of the agency’s public records and where such inspection may occur. The proposed rule indicates that applicable federal and state law may prohibit publication of certain records. It also contains provisions regarding the costs for searching for public records and copying them. These provisions are in accordance with various HRS and HAR, e.g., HRS §91-2.5, HRS §92-21 and HAR §2-71-31.

[The current PEHF rule only identifies what records may be inspected and gives the address of the PEHF office. See HAR §6-30-3.]

RULE 1.03 - Computation of Time

Various rules require actions to be taken within a specific period of time. This rule specifies how these time periods will be calculated. It follows the calculation used by courts in Hawaii.

[This rule is similar to the current PEHF rule. See HAR §6-30-4. However, it does not refer to calculation of “monthly” periods of times since they are not used in the proposed rules.]

RULE 1.04 - Officers of the Board

This now basically follows the Board’s operating rules.

[There is no PEHF rule covering this subject matter.]

RULE 1.05 - Committees of the Board

This now basically follows the Board's operating rules. However, it does not include the initial establishment of the Administrative Committee, Benefits Committee and Rules Committee.

[There is no PEHF rule covering this subject matter.]

RULE 1.06 - Meetings of the Board

This now basically follows the Board's operating rules. The one exception is the provision regarding alternate dispute resolution. Different methods of alternate dispute resolution could be proposed, or the Board could decide not to agree upon any form of alternate dispute resolution in advance.

[There is no PEHF rule covering this subject matter.]

RULE 1.07 - Appearances before the Board

In many respects, this rule now follows the Board's operating rules. In addition, it: (a) allows persons to appear before the Board by a representative; (b) prohibits persons associated with the Fund from representing anyone before the Board on matters that they handled or passed upon when associated with the Fund; (c) permits the Board to adopt additional standards and procedures for appearances and proceedings before the Board; and (d) permits the Board to decline to hear testimony or evidence on matters that are the subject of pending litigation involving the Board.

[The current PEHF rule requires prior notice of someone desiring to give oral testimony before the board, allows the board to rearrange its agenda for the most efficient and convenient presentation of oral testimony, requires the board to allow each person at least five minutes of oral testimony, and provides that the rule shall not prevent the board from soliciting oral remarks from persons present at the meeting. See PEHF §6-30-6. In most other respects, the proposed rule is very similar to the PEHF rule.]

RULE 1.08 - Delegation of Authority

Sometimes courts have stated that a person or entity was not authorized to perform a task delegated to him, her or it, since there was no statute or rules authorizing such a delegation. This rule is meant to authorize such delegations.

[There is no PEHF rule covering this subject matter.]

RULE 1.09 - State Ethics Code

This was put in since it is part of the Board's operating rules. It is not necessary as the Board and all state employees are subject to the State Ethics Code anyway.

[There is no PEHF rule covering this subject matter.]

RULE 1.10 - Controlling Law

Federal or state law may pre-empt or invalidate a rule, a part of a rule, or certain applications of a rule. This provision is like a savings clause in a contract. To the extent any of the rules are not pre-empted or invalidated by federal or state law, they will continue to be applied by the Board.

[There is no PEHF rule covering this subject matter.]

RULE 2.01 - Adoption, Amendment or Repeal of Rules

This rule specifies that any trustee may move to adopt, amend or repeal any of the Board's rules. It also specifies that any interested person may petition the Board to adopt, amend or repeal any of the Board's rules. The rule specifies what information must appear in the petition. In these respects, the rule is very similar to what appears in other agencies' rules. However, the rule differs in its incorporation of the rulemaking requirements of HRS §87A-26.

[The PEHF has two rules dealing with rulemaking – one for rule changes proposed by the board and one for rule changes petitioned for by interested persons. See HAR §§ 6-31-1 and 6-31-2. The rule for rule changes proposed by the board contains specific procedures for a public hearing on such rule changes, i.e., notice, hearing procedures, recording on comments, etc. The rule for rule changes petitioned for by an interested person permits the board to consider the written petition without a hearing and make a decision on the petition within 30 days.]

2.02 - Declaratory Rulings

Under HRS §91-7, each agency must adopt rules prescribing the form of petitions for declaratory rulings and the procedure for the consideration and disposal of such petitions. This rule is very similar to what appears in other agencies' rules on the same subject.

[The proposed rule differs from the current PEHF rule in the following ways: (a) the current PEHF rule provides for petitions to intervene in a declaratory ruling proceeding; (b) the current PEHF rule permits the board to delegate a petition for a declaratory ruling to a committee for hearing and a recommended decision to the board; (c) the current PEHF rule permits but does not require a hearing on a petition for declaratory ruling; and (d) the proposed rule permits seeking the assistance of the attorney general and other state agencies with respect to a petition for a declaratory ruling. In all other respects, the proposed rule is substantially similar to the current PEHF rule. See HAR §6-31-3]

RULE 2.03 - Administrative Appeals

This rule specifies the procedure to be followed by an aggrieved person who wishes to appeal a decision of the Fund to the Board. Such decisions include: (1) a determination that the person was not eligible to be enrolled in or covered by the Fund's benefits plans; (2) a determination that a person can't make certain changes in his or her enrollment or coverage, or change plans; (3) a cancellation or termination of the person's enrollment in the Fund's benefits plans; or (4) a refusal to reinstate a person's enrollment in the Fund's benefit plans. Basically,

the procedure set out by this rule requires a written appeal containing certain information. The Board is not required to hold a hearing on any appeal unless it is required to do so under applicable federal or state law.

[The current PEHF rule allows an employee-beneficiary who is dissatisfied with the action of his or her employing agency to enroll or change an existing enrollment to appeal to the administrator in writing within 31 days of the subject action. It also allows an employee-beneficiary to similarly appeal the suspension or cancellation of the employee-beneficiary's enrollment to the administrator. If there isn't a satisfactory response, the employee-beneficiary may be granted an appearance before the board by submitting a petition containing a concise statement of his or her grievance. See HAR §6-30-5]

RULE 3.01 – Employee-Beneficiary

This rule clarifies who is entitled to enroll in the Fund's benefits plans as an employee-beneficiary. It basically follows the definition of employee-beneficiary in HRS §87A-1. However, it clarifies when a surviving spouse and unmarried child of an employee killed in the performance of duty or of a deceased retired employee ceases to be eligible, i.e., upon remarriage and as of midnight on the child's nineteenth birthday. It also provides that eligibility to enroll is contingent on an employee-beneficiary satisfying the conditions for enrollment set out in Rules 5.02 and 5.03, and not being subject to cancellation or termination under Rules 6.03 and 6.04.

[The proposed rule differs from the current PEHF rule in that it provides that eligibility to enroll in the Fund's benefits plans is contingent on the employee-beneficiary satisfying the conditions in Rules 5.02 and 5.03, and not being subject to cancellation or termination under Rules 6.03 and 6.04. In all other respects, it is substantially the same as the current PEHF rule. See HAR §6-32-1]

RULE 3.02 – Dependent-Beneficiary

This rule clarifies who is eligible to be covered as a dependent-beneficiary in the Fund's benefits plans. Again, it basically follows the definition of dependent-beneficiary in HRS §87A-1. It clarifies when an unmarried child ceases to be eligible as a dependent-beneficiary. In this respect, it sets out what proof a full-time student must submit to the Fund. It also makes a dependent-beneficiary's eligibility contingent on satisfying the conditions in Rules 5.02 and 5.03, and not being subject to cancellation or termination under Rules 6.03 and 6.04.

[The proposed rule differs from the current PEHF rule in that it provides that eligibility for coverage in the Fund's benefits plans is contingent on the dependent-beneficiary satisfying the conditions in Rules 5.02 and 5.03, and not being subject to cancellation or termination under Rules 6.03 and 6.04. In addition, it permits coverage for an unmarried child of an employee-beneficiary if the child: (a) is a full-time student and under the age of 25, and (b) is incapable of self-support due to a mental or physical incapacity that existed before the age of 19. In all other respects, the proposed rule is substantially the same as the current PEHF rule. See HAR 6-32-2]

RULE 3.03 – Long-Term Care Benefits Plan

This rule specifies who is eligible for enrollment in the long-term care benefits plans offered by the Fund. It basically follows HRS §87A-18.

[There is no PEHF rule covering this subject matter.]